

Introduced by Senator Vasconcellos

February 21, 2003

An act to amend Sections 4140, 4142, 4145, and 4147 of, to add Sections 4142.2, 4142.4, 4142.6, and 4142.8 to, and to repeal Section 4146 of, the Business and Professions Code, and to amend Sections 11364 and 11364.5 of the Health and Safety Code, relating to hypodermic needles and syringes.

LEGISLATIVE COUNSEL'S DIGEST

SB 774, as introduced, Vasconcellos. Hypodermic needles and syringes.

(1) Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes. Under existing law, a prescription is required to purchase a hypodermic needle or syringe for human use, except to administer adrenaline or insulin.

This bill would authorize a licensed pharmacist to sell hypodermic needles or syringes to a person without a prescription under specified conditions.

(2) Existing law requires a person to properly establish his or her identity in order to purchase a needle or syringe. Existing law requires a pharmacist to keep detailed records of nonprescription sales of hypodermic needles and syringes.

This bill would delete both the identity requirement and the requirement that a pharmacist keep detailed records of nonprescription sales of hypodermic needles and syringes.

(3) Existing law prohibits the possession and sale of drug paraphernalia.

This bill would authorize a person to possess up to 30 hypodermic needles or syringes if acquired through an authorized source.

(4) Existing law prohibits the disposal of hypodermic needles and syringes in certain cases.

This bill would increase the criminal penalty for improper disposal of hypodermic needles and syringes in certain cases, thereby imposing a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Injection drug use is linked to 19 percent of all AIDS cases
4 and one-half of all hepatitis C cases in California. Injection drug
5 users become infected and transmit diseases such as HIV and
6 hepatitis C to others by sharing blood-contaminated syringes.

7 (b) The lifetime cost of treating one person with AIDS is
8 estimated to be over one hundred ninety-five thousand dollars
9 (\$195,000).

10 (c) According to the California Department of Health Services,
11 500,000 to 600,000 Californians are estimated to have contracted
12 hepatitis C, a disease for which there is no known cure.

13 (d) The United States Public Health Service and the Centers for
14 Disease Control and Prevention recommend that injection drug
15 users who cannot or will not stop injecting drugs use a sterile
16 needle for every injection as a public health measure to limit
17 blood-borne disease transmission.

18 (e) Current California law requiring a prescription for the
19 purchase of syringes and restricting the possession of syringes
20 presents a formidable obstacle to disease prevention and threatens
21 public safety. California is only one of six states that requires a
22 prescription to purchase a syringe.

23 (f) Legislation to permit the pharmacy-based sale of sterile
24 syringes without a prescription would reduce new cases of HIV,

1 hepatitis C, and other blood-borne diseases and would ultimately
2 save California millions of dollars in medical costs.

3 SEC. 2. This act shall be known and may be cited as the
4 Syringe Pharmacy Sale and Disease Prevention Act.

5 SEC. 3. Section 4140 of the Business and Professions Code
6 is amended to read:

7 4140. ~~No~~ A person ~~shall~~ *may not* possess or have under his or
8 her control ~~any~~ a hypodermic needle or syringe except when
9 acquired in accordance with this article.

10 SEC. 4. Section 4142 of the Business and Professions Code
11 is amended to read:

12 4142. (a) Except as otherwise provided by this article, ~~no~~ a
13 hypodermic needle or syringe *for human use* shall *not* be sold at
14 retail ~~except upon the prescription of a physician, dentist,~~
15 ~~veterinarian, or podiatrist.~~ *unless it is sold in a licensed pharmacy*
16 *by either a pharmacist or a person licensed by the board to sell or*
17 *furnish hypodermic needles or syringes.*

18 (b) *A person who is 18 years of age or older may purchase for*
19 *personal use pursuant to subdivision (a) up to 30 hypodermic*
20 *needles or syringes per transaction without a prescription.*

21 SEC. 5. Section 4142.2 is added to the Business and
22 Professions Code, to read:

23 4142.2. A licensed pharmacy that sells nonprescription
24 hypodermic needles and syringes at retail for human use shall do
25 the following:

26 (a) Notify the local health officer, as defined in Chapter 1
27 (commencing with Section 101000) of Part 3 of Division 101 of
28 the Health and Safety Code, that the pharmacy will be selling
29 hypodermic needles and syringes without prescriptions.

30 (b) Store hypodermic needles and syringes so that they are
31 available only to authorized personnel, and not openly available to
32 customers.

33 (c) Report the number of syringes sold per month and the
34 number of sales transactions for syringes and needles sold without
35 a prescription per month to the local health officer.

36 SEC. 6. Section 4142.4 is added to the Business and
37 Professions Code, to read:

38 4142.4. At the time of each purchase of nonprescription
39 hypodermic needles and syringes at retail for human use, a

1 licensed pharmacy that sells those items shall provide a purchaser
2 the following information:

3 (a) Information regarding the safe disposal of hypodermic
4 needles and syringes that includes a notice of the penalties
5 provided in Section 4147 for the improper disposal of hypodermic
6 needles and syringes on playgrounds, public beaches, public
7 parks, or school grounds.

8 (b) Public health information about the prevention, testing, and
9 treatment of substance abuse, including a telephone number to call
10 for assistance, and information on the transmission of blood-borne
11 diseases, including information about the prevention, testing, and
12 treatment of HIV and hepatitis C.

13 SEC. 7. Section 4142.6 is added to the Business and
14 Professions Code, to read:

15 4142.6. A licensed pharmacy that sells nonprescription
16 hypodermic needles and syringes at retail for human use shall
17 provide one or more of the following safe syringe disposal
18 programs:

19 (a) An onsite safe syringe disposal program.

20 (b) Make available for purchase mail-back sharps disposal
21 packages that include postage paid, return packaging that is
22 authorized by the United States Postal Service, a sharps container
23 that meets applicable state and federal requirements, and tracking
24 forms to verify destruction at a certified disposal facility.

25 (c) Make available for purchase or furnish personal sharps
26 disposal containers and refer purchasers of nonprescription
27 hypodermic needles and syringes to locally authorized,
28 home-generated sharps consolidation points as defined in Section
29 117904 of the Health and Safety Code or to locally registered
30 medical waste generators that accept home-generated medical
31 sharps waste for disposal pursuant to Section 118147 of the Health
32 and Safety Code.

33 SEC. 8. Section 4142.8 is added to the Business and
34 Professions Code, to read:

35 4142.8. In order to maximize the public health benefits and
36 public acceptance of the provisions of this article, the local health
37 officer shall be available to do all of the following:

38 (a) Consult with pharmacies in establishing policies to sell
39 hypodermic needles and syringes without a prescription.



1 (b) Review the appropriateness of information a licensed
2 pharmacy is required to provide under Section 4142.4.

3 (c) Advise pharmacies, as necessary, on the options available
4 within their jurisdiction for the disposal of used hypodermic
5 needles and syringes that have been sold pursuant to this article.

6 (d) To the extent feasible, assist in coordinating activities
7 authorized or required by this section with existing local programs
8 directed at HIV, hepatitis C, and substance abuse treatment and
9 prevention.

10 SEC. 9. Section 4145 of the Business and Professions Code
11 is amended to read:

12 4145. Notwithstanding any other provision of law, a
13 pharmacist or physician may, without a prescription or a permit,
14 furnish hypodermic needles and syringes for human use ~~in the~~
15 ~~administration of insulin or adrenaline~~; a pharmacist or
16 veterinarian may, without a prescription or license, furnish
17 hypodermic needles and syringes for use on poultry or animals;
18 and a person may, without a prescription or license, obtain
19 hypodermic needles and syringes from a pharmacist or physician
20 for human use ~~in the administration of insulin or adrenaline~~, or
21 from a pharmacist, veterinarian, or licenseholder, for use on
22 poultry or animals; ~~if all of the following requirements are met:~~

23 ~~(a) No needle or syringe shall be furnished to a person who is~~
24 ~~unknown to the furnisher and unable to properly establish his or~~
25 ~~her identity.~~

26 ~~(b) The furnisher, at the time furnishing occurs, makes a record~~
27 ~~of the furnishing in the manner required by Section 4146.~~

28 SEC. 10. Section 4146 of the Business and Professions Code
29 is repealed.

30 4146. ~~Any furnishing of a hypodermic syringe or hypodermic~~
31 ~~needle without a prescription shall, at the time of furnishing, be~~
32 ~~recorded in a book by the furnisher. The record of furnishing shall~~
33 ~~consist of the date and hour of the furnishing, the type or kind, size,~~
34 ~~and quantity of syringe or needle furnished, the purpose and use~~
35 ~~for which the needle or syringe was obtained, the signature of the~~
36 ~~furnisher, and the signature and address of the person to whom the~~
37 ~~needle or syringe was furnished. The record book shall be~~
38 ~~available for inspection by any authorized officer of the law.~~

39 SEC. 11. Section 4147 of the Business and Professions Code
40 is amended to read:

1 4147. (a) *For purposes of this section, “playground” means*
2 *any park or outdoor recreational area specifically designed to be*
3 *used by children that has play equipment installed, or any similar*
4 *facility located on public or private school grounds or on city or*
5 *county parks.*

6 (b) Any hypodermic needle or syringe that is to be disposed of,
7 shall be contained, treated, and disposed of, pursuant to Part 14
8 (commencing with Section 117600) of Division 104 of the Health
9 and Safety Code.

10 (c) *It shall be unlawful to discard or dispose of a hypodermic*
11 *needle or syringe upon the grounds of a playground, a public*
12 *beach, a public park, or any public or private elementary,*
13 *vocational, junior high, or high school.*

14 (d) A person who knowingly violates subdivision (c) is guilty of
15 a misdemeanor; and upon conviction shall be punished by a fine
16 or not less than two hundred dollars (\$200) and not more than two
17 thousand dollars (\$2,000), or by imprisonment of up to six months,
18 or by both that fine and imprisonment.

19 (e) Subdivision (c) shall not apply to the containment,
20 treatment, and disposal of medical sharps waste from medical care
21 or first aid services rendered on school grounds, nor to the
22 containment, treatment, and disposal of hypodermic needles or
23 syringes used for instructional or educational purposes on school
24 grounds.

25 SEC. 12. Section 11364 of the Health and Safety Code is
26 amended to read:

27 11364. (a) It is unlawful to possess an opium pipe or any
28 device, contrivance, instrument, or paraphernalia used for
29 unlawfully injecting or smoking (1) a controlled substance
30 specified in subdivision (b), (c), or (e), or paragraph (1) of
31 subdivision (f) of Section 11054, specified in paragraph (14), (15),
32 or (20) of subdivision (d) of Section 11054, specified in
33 subdivision (b) or (c) of Section 11055, or specified in paragraph
34 (2) of subdivision (d) of Section 11055, or (2) a controlled
35 substance which is a narcotic drug classified in Schedule III, IV,
36 or V.

37 (b) *This section shall not apply to the possession solely for*
38 *personal use of supplies of up to 30 hypodermic needles or syringes*
39 *acquired from authorized sources, including, but not limited to,*
40 *pharmacies, hospitals, and public health clinics.*

SEC. 13. Section 11364.5 of the Health and Safety Code is amended to read:

11364.5. (a) Except as authorized by law, ~~no~~ *a* person shall *not* maintain or operate ~~any~~ *a* place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia is completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 18 years not accompanied by a parent or legal guardian are excluded. Each entrance to such a room or enclosure shall be signposted in reasonably visible and legible words to the effect that drug paraphernalia is kept, displayed or offered in such room or enclosure and that minors, unless accompanied by a parent or legal guardian, are excluded.

(b) Except as authorized by law, no owner, manager, proprietor or other person in charge of any room or enclosure, within any place of business, in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away shall permit or allow any person under the age of 18 years to enter, be in, remain in or visit such room or enclosure unless such minor person is accompanied by one of his or her parents or by his or her legal guardian.

(c) Unless authorized by law, no person under the age of 18 years shall enter, be in, remain in or visit any room or enclosure in any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless accompanied by one of his or her parents or by his or her legal guardian.

(d) As used in this section, “drug paraphernalia” means all equipment, products, and materials of any kind which are intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. “Drug paraphernalia” includes, but is not limited to, all of the following:

(1) Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of

- 1 plant which is a controlled substance or from which a controlled
2 substance can be derived.
- 3 (2) Kits intended for use or designed for use in manufacturing,
4 compounding, converting, producing, processing, or preparing
5 controlled substances.
- 6 (3) Isomerization devices intended for use or designed for use
7 in increasing the potency of any species of plant which is a
8 controlled substance.
- 9 (4) Testing equipment intended for use or designed for use in
10 identifying, or in analyzing the strength, effectiveness or purity of
11 controlled substances.
- 12 (5) Scales and balances intended for use or designed for use in
13 weighing or measuring controlled substances.
- 14 (6) Diluents and adulterants, such as quinine hydrochloride,
15 mannitol, mannite, dextrose, and lactose, intended for use or
16 designed for use in cutting controlled substances.
- 17 (7) Separation gins and sifters intended for use or designed for
18 use in removing twigs and seeds from, or in otherwise cleaning or
19 refining, marijuana.
- 20 (8) Blenders, bowls, containers, spoons, and mixing devices
21 intended for use or designed for use in compounding controlled
22 substances.
- 23 (9) Capsules, balloons, envelopes, and other containers
24 intended for use or designed for use in packaging small quantities
25 of controlled substances.
- 26 (10) Containers and other objects intended for use or designed
27 for use in storing or concealing controlled substances.
- 28 (11) Hypodermic syringes, needles, and other objects intended
29 for use or designed for use in parenterally injecting controlled
30 substances into the human body.
- 31 (12) Objects intended for use or designed for use in ingesting,
32 inhaling, or otherwise introducing marijuana, cocaine, hashish, or
33 hashish oil into the human body, such as the following:
- 34 (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
35 pipes with or without screens, permanent screens, hashish heads,
36 or punctured metal bowls.
- 37 (B) Water pipes.
- 38 (C) Carburetion tubes and devices.
- 39 (D) Smoking and carburetion masks.



1 (E) Roach clips, meaning objects used to hold burning
2 material, such as a marijuana cigarette that has become too small
3 or too short to be held in the hand.

4 (F) Miniature cocaine spoons, and cocaine vials.

5 (G) Chamber pipes.

6 (H) Carburetor pipes.

7 (I) Electric pipes.

8 (J) Air-driven pipes.

9 (K) Chillums.

10 (L) Bongs.

11 (M) Ice pipes or chillers.

12 (e) In determining whether an object is drug paraphernalia, a
13 court or other authority may consider, in addition to all other
14 logically relevant factors, the following:

15 (1) Statements by an owner or by anyone in control of the
16 object concerning its use.

17 (2) Prior convictions, if any, of an owner, or of anyone in
18 control of the object, under any state or federal law relating to any
19 controlled substance.

20 (3) Direct or circumstantial evidence of the intent of an owner,
21 or of anyone in control of the object, to deliver it to persons whom
22 he or she knows, or should reasonably know, intend to use the
23 object to facilitate a violation of this section. The innocence of an
24 owner, or of anyone in control of the object, as to a direct violation
25 of this section shall not prevent a finding that the object is intended
26 for use, or designed for use, as drug paraphernalia.

27 (4) Instructions, oral or written, provided with the object
28 concerning its use.

29 (5) Descriptive materials, accompanying the object which
30 explain or depict its use.

31 (6) National and local advertising concerning its use.

32 (7) The manner in which the object is displayed for sale.

33 (8) Whether the owner, or anyone in control of the object, is a
34 legitimate supplier of like or related items to the community, such
35 as a licensed distributor or dealer of tobacco products.

36 (9) The existence and scope of legitimate uses for the object in
37 the community.

38 (10) Expert testimony concerning its use.

39 (f) This section shall not apply to any of the following:

1 (1) Any pharmacist or other authorized person who sells or
2 furnishes drug paraphernalia described in paragraph (11) of
3 subdivision (d) upon the prescription of a physician, dentist,
4 podiatrist or veterinarian *or who sells hypodermic needles or*
5 *syringes without a prescription pursuant to Section 4142 or 4145*
6 *of the Business and Professions Code.*

7 (2) Any physician, dentist, podiatrist or veterinarian who
8 furnishes or prescribes drug paraphernalia described in paragraph
9 (11) of subdivision (d) to his or her patients.

10 (3) Any manufacturer, wholesaler or retailer licensed by the
11 California State Board of Pharmacy to sell or transfer drug
12 paraphernalia described in paragraph (11) of subdivision (d).

13 (g) Notwithstanding any other provision of law, including
14 Section 11374, violation of this section shall not constitute a
15 criminal offense, but operation of a business in violation of the
16 provisions of this section shall be grounds for revocation or
17 nonrenewal of any license, permit, or other entitlement previously
18 issued by a city, county, or city and county for the privilege of
19 engaging in such business and shall be grounds for denial of any
20 future license, permit, or other entitlement authorizing the conduct
21 of such business or any other business, if the business includes the
22 sale of drug paraphernalia.

23 SEC. 14. The Legislative Analyst shall review the available
24 literature evaluating the following programs in regards to their
25 public acceptance, efficacy, and cost: the New York State
26 Department of Health Expanded Syringe Access Demonstration
27 Program (ESAP) safety insert recommendations on safe syringe
28 disposal, the Rhode Island State Department of Public
29 Health-sponsored syringe disposal programs (Sharps Smart), and
30 the San Francisco Safe Needle Disposal Program (SFSNDP). The
31 Legislative Analyst shall also review recent literature on syringe
32 disposal programs to identify other effective programs. The
33 Legislative Analyst shall identify the most effective options for
34 implementing a program in California, the approximate cost of
35 implementing a program statewide, and a potential funding stream
36 to support a program. On or before December 1, 2003, the
37 Legislative Analyst shall report his or her findings to the
38 committees of both houses of the Legislature with subject matter
39 jurisdiction over health or criminal justice matters.

1 SEC. 15. No reimbursement is required by this act pursuant
2 to Section 6 of Article XIII B of the California Constitution
3 because the only costs that may be incurred by a local agency or
4 school district will be incurred because this act creates a new crime
5 or infraction, eliminates a crime or infraction, or changes the
6 penalty for a crime or infraction, within the meaning of Section
7 17556 of the Government Code, or changes the definition of a
8 crime within the meaning of Section 6 of Article XIII B of the
9 California Constitution.

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